

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	No. 10AP-86
Plaintiff-Appellee,	:	(C.P.C. No. 09CR03-1471)
	:	and
v.	:	No. 10AP-91
	:	(C.P.C. No. 09CR01-104)
Kadeem M. Thompson,	:	
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on October 21, 2010

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Yeura R. Venters, Public Defender, and *Allen V. Adair*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

HENDRICKSON, J.

{¶1} Defendant-appellant, Kadeem M. Thompson, appeals from two separate judgments of conviction and sentence entered by the Franklin County Court of Common Pleas pursuant to negotiated guilty pleas entered by appellant. At sentencing, the trial court ordered that the jail terms imposed in the respective cases would be served consecutively.

{¶2} Appellant brings the following assignment of error on appeal:

The trial court erred by imposing consecutive sentences without making statutorily required findings in accordance with R.C. 2929.14(E)(4).

{¶3} The sole issue raised by appellant is that the trial court erred by ordering consecutive sentences in the two cases without making the necessary findings once required by R.C. 2929.14(E)(4) to overcome the presumption set forth in R.C. 2929.41(A) favoring concurrent sentences.

{¶4} Appellant concedes that, under the Supreme Court of Ohio's holding in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, the requirement of judicial fact-finding pursuant to R.C. 2929.14(E)(4) was declared unconstitutional and that portion of the sentencing statute was severed and struck down.

{¶5} Appellant now argues that the United States Supreme Court decision in *Oregon v. Ice* (2009), ___ U.S. ___, 129 S.Ct. 711, nullifies the pertinent holding in *Foster* and revives the statutory requirement of judicial fact-finding before imposition of consecutive criminal sentences. Appellant also argues that the Ohio legislature has from time to time "re-enacted" R.C. 2929.14(E)(4) by restating the language of that section when making amendments to other subsections of R.C. 2929.14.

{¶6} This court has uniformly rejected both these lines of argument. See, e.g., *State v. Johnson*, 10th Dist. No. 09AP-1065, 2010-Ohio-3381, and *State v. Busby*, 10th Dist. No. 09AP-1119, 2010-Ohio-4516. Until the Supreme Court of Ohio considers and rules upon the impact of *Ice* on the holding in *Foster*, we remain bound by *Foster*.

{¶7} Appellant's assignment of error is accordingly overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN and FRENCH, JJ., concur.

HENDRICKSON, J., of the Twelfth Appellate District, sitting
by assignment in the Tenth Appellate District.
